CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 57

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC., PETITIONER,

vs.

UNIVERSAL INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 12, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

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INDEX.

	Original	Print
Record from D. C. U. S., District of Maryland	1	1
Caption (omitted in printing)	1	
Declaration in Court of Common Pleas	1	1
Exhibit—Insurance policy	5	3
Pleas to declaration	17	13
Exhibit "A"—Indorsement to insurance policy	19	15
Joinder of issue on first and second pleas of defendant and demurrer to third and fourth pleas	20	16
Opinion of the court, Coleman, J.	21	17
Colloquy in open court following delivery of opinion by the court	27	22
Order overruling demurrer to pleas and directing entry of judgment in favor of defendant	28	23
Docket entry of judgment	29	24
Assignments of error	29	24
Stipulation as to making up transcript of record	31	25
Docket entries	32	26
Memorandum of the clerk re appeal papers	33	27
Order to transmit record	34	27
Clerk's certificate (omitted in printing)	34	
Proceedings in U. S. C. C. A., Fourth Circuit	35	28
Docket entries	35	28
Opinion, Parker, J.	36	29
Judgment	46	38
Clerk's certificate (omitted in printing)	47	
Order allowing certiorari	48	38

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[fol. 1] [Caption omitted]

IN COURT OF COMMON PLEAS OF BALTIMORE CITY

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC., a Body Corporate,

vs.

UNIVERSAL INSURANCE COMPANY, a Body Corporate

[fol. 2] DECLARATION

Lanasa Fruit Steamship and Importing Company, Inc., a body corporate, plaintiff, by George Forbes and Henry L. Wortche, its attorneys, sues Universal Insurance Company, a body corporate, defendants:

For money payable by the defendant to the plaintiff.

1. For goods bargained and sold by the plaintiff to the the defendant.

2. And for work done and materials provided by the plaintiff for the defendant, at its request.

3. And for money lent by the plaintiff to the defendant.

4. And for money paid by the plaintiff for the defendant, at its request.

5. And for money received by the defendant for the use of the plaintiff.

6. And for money found to be due from the defendant to the plaintiff on accounts stated between them.

7. And for that the plaintiff was the owner of a cargo of bananas aboard the Nowegian Steamship "Smaragd", at the time of her stranding hereinafter mentioned; that on the 23rd day of June, 1933, the defendant, in consideration of an agreed premium, to it paid, executed and delivered to the Lanasa Fruit Importing Company, Inc., an open policy of insurance, and by endorsement of April 23rd, 1934, the interest in said policy was vested in the plaintiff, which policy is hereunto attached, upon all cargoes of bananas and fruit imported by the plaintiff from West Indian ports to Baltimore on vessels designated by

the plaintiff, whereby the defendant promised to pay the plaintiff, on damage accruing to it by reason of destruction of or injury to the said cargoes of bananas and fruit so imported by plaintiff, whether by perils of the sea, or [fol. 3] by fire or explosion, or by stranding, or by any other instances therein mentioned, not in excess of $35,000.00; that the plaintiff was the owner of the cargo of bananas aboard the Norwegian Steamship "Smaragd", which cargo was insured by the defendant under the policy aforesaid, and while said vessel was proceeding up the Chesapeake Bay to Baltimore on the 21st day of July, 1935, and while said policy was in full force and effect, the said Steamship "Smaragd" went aground and stranded off Seven Foot Knoll, in the Chesapeake Bay, and before she could be floated the entire cargo of bananas thereon became overripe and rotted, causing a total loss of said cargo of bananas to the plaintiff, which loss was due to a cause insured against under said policy; that the plaintiff's loss was $20,229.00, per account attached; that the plaintiff has furnished the defendant with proof of its loss and interest, and has otherwise duly performed all the conditions of the policy on its part to be performed; and has made frequent demands upon the defendant for the payment of its loss, as aforesaid, but the defendant has refused and neglected to pay the same, and still neglects and refuses to pay the same, to the great damage of the plaintiff.

Wherefore, the plaintiff brings this suit and claims Twenty-five thousand Dollars ($25,000.00) damages.

George Forbes, Henry L. Wortche, Attorneys for plaintiff.

Duly sworn to by Antonio Lanasa. Jurat omitted in printing.

[fol. 4] IN COURT OF COMMON PLEAS OF BALTIMORE CITY

[Title omitted]

And the plaintiff elects to have this case tried before a jury.

George Forbes, Henry L. Wortche, Attorneys for Plaintiff.

[fol. 5] EXHIBIT TO DECLARATION

Ocean Cargo

No. 12872

Universal Insurance Company,

Newark, New Jersey,

Talbot, Bird & Co., Inc.,

General Managers

51 Beaver Street, New York, N. Y.

On Account of Form —

Lanasa Fruit Importing Company, Inc., and/or as Agents

In case of loss, to be paid to form .....
Do make Insurance and cause themselves to be insured, lost or not lost, at and from upon all kinds of lawful goods and merchandises, laden or to be laden on board the good ..... form .....
whereof is master for this present voyage .....
or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said goods and merchandises from and immediately following the loading thereof on board of the said vessel, at .....
form ..... as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at ..... form ..... as aforesaid. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises, hereby insured, are valued (premium included) at .....
form .....

Touching the adventures and perils which the said Universal Insurance Company is contented to bear, and take upon itself, in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, assailing thieves, jettisons, [fol. 6] letters of mart and counter-mart, reprisals, takings at sea, arrests, restraints and detainments of all kings,